



October 1, 1999

Mr. Mark H. Neal
Law Offices
Kee & Neal
912 North Velasco
Angleton, Texas 77515

OR99-2796

Dear Mr. Neal:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128344.

The Angleton Independent School District (the "district"), which you represent, received a written request for all

performance evaluations, resume, job applications, complaints about, salary history and disciplinary action against Angleton ISD Police Chief Nathan Coleman. I also respectfully request copies of or access to performance evaluations, resume, job applications, complaints about, salary history, disciplinary action against and reason for termination of [a former district police officer].

You state that some responsive records have been released to the requestor. You seek to withhold other records, or portions thereof, pursuant to the common-law right of privacy, as incorporated into section 552.102 of the Government Code, and to section 552.117 of the Government Code.

Section 552.102(a) of the Government Code is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982). *See also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101 of the Government Code:¹ the information must

¹Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ ref'd n.r.e.).

You contend that certain correspondence the district received, which this office construes to consist of a complaint about one of the named officers, concerning the officer's alleged violation of a federal law and a Bureau of Alcohol, Tobacco and Firearms regulation is protected by section 552.102(a) because "to our knowledge the ATF found no violation." The information at issue, however, pertains to the former employee's qualifications to act as a peace officer, and as such cannot be deemed to be outside the realm of public interest. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Section 552.102 was not intended to protect this type of information. *See also* Open Records Decision No. 579 (1990) (information not excepted from disclosure merely because it is false or misleading); *Cain v. Hearst Corp.*, 878 S.W.2d 577 (Tex. 1994) (state of Texas does not recognize tort of false-light invasion of privacy).

We note, however, that among the documents you submitted to this office is a compilation of the criminal history of one of the named officers. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See* Open Records Decision Nos. 616 (1993), 565 (1990). We have marked the documents that the district must withhold in accordance with *Reporters Committee*.

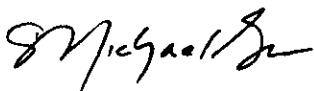
You also seek to withhold, pursuant to common-law privacy, the identity of one of the district's teachers who filed a complaint of speeding in a school zone against one of the named officers. The identity of a complainant in an alleged criminal action has been ruled to be public information. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 187 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we do not believe that the identity of an individual who reports criminal behavior to the property authority may be withheld from the public on privacy grounds. Because you have raised no other applicable exception for the teacher's identity, the district must release this information.

Finally, you contend that several documents you submitted to this office are excepted from public disclosure pursuant to section 552.117 of the Government Code. Section 552.117(2) makes confidential all information that relates to the home address, home telephone number, or social security number of a peace officer as defined by article 2.12, Code of Criminal

Procedure. Section 552.117(2) also makes confidential all information that reveals whether such a peace officer has family members. Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988). We generally agree that the district must withhold all of the information you have indicated as coming within the protection of section 552.117(2). However, only portions of the memorandum dated January 20, 1999 must be withheld under this exception, and we have marked this document accordingly; the remaining portions of this memorandum must be released.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/RWP/nc

Ref.: ID# 128344

cc: Mr. Michael Wright
The Facts
P.O. Box 549
Clute, Texas 77531
(w/o enclosures)

²We also note that the February 1, 1999 complaint filed against one of the officers contains that officer's social security number, which must be withheld pursuant to section 552.117(2).